

December 16, 2004

Roberto A. Datorre, Sr.
410 16th Street
Miami Beach, FL 33139

RE: REQUEST FOR ADVISORY OPINION 04-200

Dear Mr. Datorre:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on December 15, 2004 and rendered its opinion based on the facts stated in your request.

You requested an advisory opinion seeking advice concerning any potential conflicts with your position as Executive Director of the Miami Beach Community Development Corporation ["Corporation"] and your possible candidacy and election to the Miami Beach City Commission.

The Corporation is a nonprofit community-based economic development corporation which leads revitalization efforts and affordable housing projects throughout South Miami Beach. The Corporation serves as a management, marketing, economic development, and advocacy planning agency for South Beach. The organization, including your salary, is partially funded by the City of Miami Beach through Community Development Block Grants [CDBG]; these grants make up approximately forty percent (40%) of its operational budget. According to the Housing & Community Development Division of the City of Miami Beach, approximately 75% of this allocation supports your salary.

In your letter to the Ethics Commission, you indicate that you are contemplating seeking election to the Miami Beach City Commission. Should you win election, you would like

to continue to serve as Executive Director of the Corporation.

Firstly, the City of Miami Beach Charter does not prohibit you from running for office while maintaining your position as Executive Director. Under the Conflict of Interest and Code of Ethics Ordinance, you would not be prohibited from continuing your employment as Executive Director of the Corporation should you win election to the Miami Beach City Commission, provided that you can find another source, other than the City's CDBG money, to support your compensation as Executive Director. Section 2-11.1 (m)(1) "*Certain appearances and payment prohibited,*" provides in part,

Nor shall such person receive compensation, directly or indirectly or in any form, for services rendered to a third person, who has applied for or is seeking some benefit from the County or a County agency, in connection with the particular benefit sought by the third person.

Your compensation is derived, in part, from City funds, specifically the CDBG monies. Since the Corporation appears annually before the City and its appropriate agency in connection with its budget matters, you would have a conflict of interest under this subsection because the Corporation applies and receives a benefit, the CDBG monies, from the City. However, you could mitigate this conflict by using other monies not obtained from the City of Miami Beach to fund your salary.

Therefore, if elected, you could continue working as Executive Director of the Corporation, only if you can establish a means other than the CDBG monies to support your salary. The Ethics Commission could monitor compliance with this stipulation.

Notwithstanding compliance with this stipulation, you would also be subject to additional restrictions under the Conflict of Interest and Code of Ethics Ordinance, as outlined below. Section 2-11.1 (d) provides,

Additionally, no person included in the term defined in subsection (b) (1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following

relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary... or if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally.

Accordingly, you would be prohibited from participating in and voting on any matters involving the Corporation. Participation includes meetings and communications connected to the Corporation prior to the actual meeting.

As Executive Director of a nonprofit, you may be involved in fundraising efforts on behalf of the Corporation. Although, you are not prohibited from continuing such efforts, as City Commissioner though, you would certainly be subject to restrictions under the Code of Ethics. As opined in INQ 02-29, your fundraising efforts would need to be broadly based and not solely focused on City vendors or potential City vendors, solicitation letters on behalf of the Corporation ought to be signed by other members of the board and any solicitation activity is done clearly as Executive Director of the Corporation, not as a City Commissioner.

Additionally, Section 2-11.1 (g) provides in part, that no government official or employee shall use his or her "official position to secure special privileges or exemptions." Accordingly, you must avoid using City of Miami Beach letterhead and other government resources to benefit the nonprofit corporation [*See RQO 03-06*].

The Code prohibits City officials from making appearances before any City board or agency on behalf of a third party. Section 2-11.1 (m) (1) provides in part,

No person included in the terms defined in...[commissioners] shall appear before any County board or agency and make a presentation on behalf of a third person with respect to any license, contract, ... or other benefit sought by the third person.

Therefore, you would not be able to make appearances before the City Commission or any City Board on behalf of

the Corporation regarding contracts, opinions, etc... This prohibition includes meetings with City staff, negotiations with personnel and officials and written correspondence seeking approval of budgets, contracts and other such benefits sought by the Corporation [*See RQO 04-132*].

Keep in mind that these above-mentioned restrictions are not intended to be entirely inclusive. Given that you are working for a nonprofit corporation which receives funding support from the City of Miami Beach, in addition to other fundraising revenues, you should be mindful of the following guidelines established by the Ethics Commission in RQO 03-06 as they relate to elected officials and their fundraising activities.

- The solicitation activity shall not be targeted to only specific individuals and entities doing business with the City, seeking to do business with the city, or who have contributed to the elected official's political campaign;
- Elected officials may not coerce government employees, citizens, entities or individuals doing business or seeking to do business with the City, into contributing donations;
- In the interest of transparency and openness, when a contributor appears before the elected official requesting some official action, said elected official should disclose that fact prior to participating in the proceeding;
- Should a matter involving an elected official's nonprofit organization come before the City Council, that official should absent himself or herself from the proceeding or discussion, and may not vote on the matter;
- Elected officials may not engage in solicitation activities during official government-sponsored meetings or events;
- Elected officials may not utilize government resources, such as official letterhead, staff or other resources to further fundraising activities;
- All written correspondence or oral presentations seeking contributions on behalf of the nonprofit should be done in the role of official/member of the nonprofit, not in the role of elected government official;
- Consult with the Ethics Commission or City Attorney regarding further clarification or interpretation of these "best practices" guidelines.

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

ROBERT MEYERS
Executive Director

Cc: Jean Olin, Esq., Miami Beach City Attorney's Office